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In the Supreme Court of the United States

October Term, 1980

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LAS VEGAS SIGN & CANVAS CORP.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington, D.C.

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[illegible],
[illegible],

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LAS VEGAS SAND & GRAVEL CORP.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the First Circuit entered on July 8, 1960, modifying an order issued by the Board against respondent.

OPINION BELOW

The court of appeals filed no opinion in support of its original decree. Its opinion denying the Board's second motion for reconsideration is reported at 283 F. 2d 26.[1] The Board's decision and order is unreported.

[1] The opinion, a joint opinion disposing of seven cases, is printed in the appendix to the Board's petition for certiorari in *National Labor Relations Board* v. *Ochoa Fertilizer Corp.*, No. —, this Term, which is being filed simultaneously with this petition.

JURISDICTION

The court of appeals entered its decree on July 8, 1960, and denied the Board's motion for reconsideration on August 3, 1960 (*infra*, pp. 7–8). A second Board motion for reconsideration was denied on October 18, 1960 (*infra*, p. 9). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act, as amended, 29 U.S.C. 160(e).

QUESTION PRESENTED

Whether the court of appeals has power under Section 10(e) of the National Labor Relations Act to modify an order entered by the National Labor Relations Board, where the respondent, in a settlement agreement, had consented to the order and its enforcement by the Court.

STATUTE INVOLVED

The relevant provisions of Section 10 of the National Labor Relations Act (61 Stat. 146, as amended, 29 U.S.C. 160) are set forth at pp. 14–15 of the Board's petition for certiorari filed in the companion case, *National Labor Relations Board* v. *Brandman Iron Co.*, No. 646, this Term.

STATEMENT

Upon charges by a local union,[2] the Board issued its complaint alleging that respondent had violated Section 8(a)(1) and (3) by: (1) laying off employees

[2] Sindicato de Empleados de Equipo Pesado, Construccion y Ramas Anexas de Puerto Rico, Inc., Local 925, STP, UPWA, AFL–CIO.

because they had chosen a union to represent them and had engaged in union activities; (2) interrogating employees as to their union membership, and activities; and (3) threatening to discharge employees if they continued their union membership and activities. Respondent filed an answer denying the violations. Thereafter, on March 10, 1960, the respondent, the charging party, and counsel for the Board entered into a stipulation in which respondent withdrew its answer, waived all further proceedings before the Board, and agreed that the Board could enter an order directing respondent to (Stip. 2–3):[3]

> 1. Cease and desist from:
>
> (a) Interrogating its employees concerning their membership in and/or their concerted activities on behalf of the Union, or any other labor organization.
>
> (b) Threatening its employees with loss of employment or that the Respondent will cease operations if the employees select the Union as their collective bargaining representative and/or if they engage in concerted activities on behalf of the Union, or of any other labor organization.
>
> (c) Terminating the employment of its employees for engaging in concerted activities on behalf of Sindicato de Empleados de Equipo Pesado, Construccion y Ramas Anexas de Puerto Rico, Inc., Local 925, STP, UPWA–AFL–CIO, or of any other labor organization.

[3] No record was printed for use in the court of appeals, and all references are to the original documents included in the certified record filed with this court.

The stipulation contained further cease and desist provisions, and provided for back pay to 16 employees in amounts ranging from $130 to $280. It also provided for the posting of notices of compliance, containing, *inter alia*, the references to "any other labor organization" in accordance with the cease and desist provision quoted above (Stip. 3–4). In addition, the stipulation expressly provided that "any appropriate United States Court of Appeals may, upon application of the Board, enter its Decree enforcing the Order of the Board" issued in accordance with the stipulation, and that "Respondent waives all defenses to the entry of the Decree * * *." (Stip. 4, ¶ 8).[4]

Pursuant to the stipulation, the Board, on April 21, 1960, entered its order, following in all respects the terms of the stipulation, including the references to the charging union "or any other labor organization" quoted above. On June 2, 1960, the Board petitioned the court below for a decree enforcing the order.

On July 8, the court, *sua sponte*, modified the Board's order and notice by striking the phrase "or any other labor organization" wherever it occurred, and, as so modified, enforced the order (*infra*, pp. 7–8). The Board filed a motion for reconsideration which the court denied on August 3 (*infra*, p. 8). A second motion for reconsideration was denied on October 18 (*infra*, p. 9), in an opinion covering six other cases as well as the instant one.[5]

[4] The stipulation was later amended in a minor detail not relevant here.

[5] The Board is petitioning for certiorari in three of the seven cases: (1) *National Labor Relations Board* v. *Ochoa Fertilizer Corp.*; (2) the instant case; and (3) *National Labor*

REASONS FOR GRANTING THE WRIT

This case presents the same question as that involved in *National Labor Relations Board* v. *Brandman Iron Company,* 281 F. 2d 797 (C.A. 6), pending before this Court on petition for certiorari, No. 646, this Term—i.e., whether the court of appeals has power under the Act to modify an order which was not contested before the Board. As shown in the Board's petition in *Brandman,* to which we respectfully refer the Court, the view of the court below is contrary to decisions of this Court and in conflict with those of other circuits. Moreover, the question presented is of importance in the administration of the Act.

For the foregoing reasons, this petition for certiorari should be granted, or, in the alternative, held in abeyance pending a decision on the question in *Brandman.*

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

STUART ROTHMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
NORTON J. COME,
Assistant General Counsel,
MARION L. GRIFFIN,
Attorney,
National Labor Relations Board.

JANUARY 1961.

Relations Board v. *Local 476, Plumbers.* The opinion is printed in the appendix to the petition in *Ochoa Fertilizer.*

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 5691.

NATIONAL LABOR RELATIONS BOARD, PETITIONER.

v.

LAS VEGAS SAND AND GRAVEL CORPORATION, RESPONDENT.

DECREE.

July 8, 1960.

This cause was submitted on "Petition for Enforcement of an Order of the National Labor Relations Board upon Stipulation of the Parties for Consent Decree", and the record of proceedings before said Board.

Upon consideration whereof, It is ordered and decreed as follows: The order of the National Labor Relations Board of April 21, 1960, as modified herein, and with the exception of paragraph 2(c), is hereby affirmed and enforced.

Paragraph 1(a) of said order is modified by striking therefrom the words "or any other labor organization".

Each of paragraphs 1(b) and 1(c) is modified by striking therefrom the words "or of any other labor organization".

Each of the first two indented paragraphs of the notice appended to said order is modified by striking therefrom the words "or any other labor organization".

The third indented paragraph of the notice appended to said order is modified by striking therefrom the words "or of any other labor organization".

It is further ordered that the respondent herein notify the Regional Director for the Twenty-fourth Region in writing within thirty (30) days of this Decree of the steps it has taken to comply with said order as herein modified, and affirmed and enforced.

By the Court:

/s/ ROGER A. STINCHFIELD,
Clerk.

A true copy:
Attest:

ROGER A. STINCHFIELD,
Clerk.

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 5691.

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

LAS VEGAS SAND AND GRAVEL CORPORATION, RESPONDENT.

ORDER OF COURT

August 3, 1960.

It is ordered that the Motion for Reconsideration filed herein by petitioner on July 25, 1960, be, and the same hereby is, denied.

By the Court:

ROGER A. STINCHFIELD, *Clerk.*

By /s/ DANA H. GALLUP,
Chief Deputy Clerk.

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 5691.

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

LAS VEGAS SAND AND GRAVEL CORPORATION.

ON SECOND MOTION FOR RECONSIDERATION OF A DECREE.

Before WOODBURY, *Chief Judge,* and HARTIGAN and ALDRICH, *Circuit Judges.*

OPINION OF THE COURT

October 18, 1960

[Omitted. Opinion printed in appendix to petition for certiorari in *National Labor Relations Board* v. *Ochoa Fertilizer Corp.*, No. —, this Term.]

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 5691.

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

LAS VEGAS SAND AND GRAVEL CORPORATION, RESPONDENT.

ORDER OF COURT.

October 18, 1960.

It is ordered that the Second Motion for Reconsideration filed herein by petitioner on August 8, 1960, be, and the same hereby is, denied.

By the Court:

/s/ ROGER A. STINCHFIELD,
Clerk.

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